

1 ALAN R. BRAYTON, ESQ., S.B. #73685
2 LLOYD F. LEROY, ESQ., S.B. #203502
3 NANCY B. THORINGTON, ESQ., S.B. #199721
4 BRAYTON♦PURCELL LLP
5 ATTORNEYS AT LAW
6 222 Rush Landing Road
7 P.O. Box 6169
8 Novato, California 94948-6169
9 (415) 898-1555

10 Attorneys for Plaintiff

11

12 **IN THE UNITED STATES DISTRICT COURT**

13

14 **IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15

16 11 MARVIN McENTIRE,) No. C 05-4156 MMC
17 12 Plaintiff,)
18 13 vs.) STIPULATION AND ORDER OF
19 14 ASBESTOS DEFENDANTS, et al.,) DISMISSAL AND REMAND TO STATE
20 15 Defendants.) COURT
21
22
23
24
25
26
27
28

16 WHEREAS:

17 1. This case was originally filed in the Superior Court of California for the County of San
18 Francisco; and
19 2. Defendant ATK Aerospace Company, Inc., now known as ATK Thiokol, Inc., filed its
20 Notice of Removal on October 13, 2005, alleging that this Court has removal jurisdiction pursuant to
21 the federal officer removal statute, 28 U.S.C. §1442(a)(1), on the ground that it was acting under the
22 direction of agencies and officers of the United States government in committing the acts that Plaintiff
23 complains of; and
24 3. The removal by defendant ATK Thiokol, Inc. did not require the consent of other party
25 defendants and no consent or joinder in the removal was submitted to the Court; and
26
27
28 ///

1 4. The parties have agreed to and do hereby stipulate that defendant ATK Thiokol, Inc.
2 should be dismissed with prejudice from the above entitled action, pursuant to FRCP 41(a)(2), each
3 party to bear its own costs;

4 IT IS HEREBY STIPULATED by and between the parties to this action through their
5 designated counsel, that because no basis currently exists for this Court to exercise jurisdiction over
6 this action, remand to the Superior Court of California for the County of San Francisco is appropriate.

7 Accordingly, the parties petition this Court for an order dismissing defendant ATK Thiokol,
8 Inc. with prejudice from this action, and remanding the action to the Superior Court of California for
9 the County of San Francisco.

10 Dated: November 1, 2005

BRAYTON♦PURCELL LLP

11

12

By: /s/
Nancy B. Thorington
Attorneys for Plaintiff

13

14

REED SMITH LLP

15

16

17

By: /s/
Pavel Ekmekchyan
Attorneys for Defendant
ATK Aerospace Company, Inc., now known as
ATK Thiokol, Inc.

18

19

20

21

22

23

24

25

26

27

28

1 **ORDER DISMISSING DEFENDANT AND REMANDING CASE TO STATE COURT**

2 Having considered the stipulation between the plaintiff and the sole removing party, and
3 good cause appearing:

4 IT IS HEREBY ORDERED that the sole removing defendant, ATK Aerospace
5 Company, Inc., now known as ATK Thiokol, Inc., is dismissed with prejudice from this action
6 pursuant to FRCP 41(a)(2), each party to bear its own costs; and

7 IT IS FURTHER ORDERED THAT the sole removing defendant having been
8 dismissed from the case, no basis currently exists for removal of this action from the Superior Court of
9 California for the County of San Francisco, and this matter should be and is, therefore, remanded to
10 that court immediately.

12 Dated: November 2, 2005



13 Maxine M. Chesney,
14 United States District Judge